

CITIES AND TOWNS BULLETIN

AND UNIFORM COMPLIANCE GUIDELINES ISSUED BY STATE BOARD OF ACCOUNTS

September 2005

APRIL AND JUNE TRAINING SCHOOLS

The State Board of Accounts extends its deepest appreciation to the officers and committees of the Indiana League of Municipal Clerks and Treasurers for making the arrangements and handling the registrations for the April Workshop at the ILMCT Conference. We want to also thank Fred Lewis, School Committee Chairperson, and his staff for handling the arrangements for the June School. Next year's June School is scheduled for June 7 and 8, 2006, at the Indianapolis Marriott on the east side of Indianapolis.

REVENUE BOND ORDINANCES – UTILITY BANK ACCOUNTS – REPORTS TO BONDHOLDERS

When drafting a revenue bond ordinance for a city or town utility bond issue, we recommend such ordinance not require the establishment of separate bank accounts for each utility fund. The interests of bondholders are adequately protected and the handling of the funds would be less complicated if the revenue bond ordinance would provide that funds of each municipal utility be deposited in only one depository account separate from all other city or town funds.

Some revenue bond ordinances provide that the Construction Fund is to be deposited in a separate depository account and all other funds of the utility are to be deposited in another depository account separate from all other funds of the city or town. We would not object to such an arrangement since the Construction Fund is usually cleared out within a few months.

One of the covenants often found in contracts between a city or town and the holders of the bonds requires that the officials will prepare and furnish to the original purchasers of the bonds and to any subsequent holder of the bonds, upon written request, complete financial statements of the utility for the preceding fiscal year. These statements must be certified by the clerk-treasurer or controller. Copies of such statements and reports should be kept on file in the office of the clerk-treasurer or controller.

BUILDING PERMIT FEES

Since there is no statutory requirement that building permit fees be placed in a separate fund, we believe that such fees should be receipted to the General Fund and disbursements for compensation of building inspectors, the cost of building permit forms, and other such expenses should be paid from the General Fund and charged against appropriations properly made therefore.

COMMON COUNCIL – CITY EMPLOYEES

IC 36-4-4-2 allows city employees to be candidates for elective office or be appointed to an office and serve in that office if appointed without having to resign.

BONDS - REGISTERED

IC 5-1-15 authorizes cities and towns to issue “bonds, notes, evidences of indebtedness, or other written obligations” in fully registered or book entry form.

The entity may employ any bank or trust company as paying agent or registrar, co-registrar, or depository institution. The bank or trust company need not be a depository bank under IC 5-13, and need not be located within the State of Indiana.

Notwithstanding any other provision of law, registrars or registration books or transfer records for bonds, notes, evidence of indebtedness, or other written obligations of any entity are not public records, but are only for the use of the entity, any trustee, fiduciary, paying agent, registrar, co-registrar, or transfer agent. A trust department of a bank having possession of these records shall not disclose them to a bond department, commercial department, subsidiary of the bank, or a subsidiary of the parent corporation of the bank. (IC 5-1-15-5)

Registrars of bond issues shall keep a register of ownership of bonds. (IC 5-1-15-6)

In an effort to facilitate accounting procedures, the State Board of Accounts has issued the following instructions:

- (1) If a bank, trust company, or other financial institution has been employed as a paying agent or registrar, a properly certified listing of bondholders from the paying agent or registrar shall serve as a mailing list for the fiscal officer. There is no requirement for each individual bondholder to file a claim.
- (2) The mailing of the funds for bonds and coupons coming due must be mailed in such a manner to ensure receipt by the bondholder by the due date specific. Personnel of financial institutions state they usually make such mailing by first class mail one to three business days in advance of the due date. They do not mail by certified or registered mail due to costs involved. We suggest you review this with your city or town attorney.
- (3) Since the paying agency or the registrar shall keep a register of ownership of bonds and all bonds and coupons shall be paid when becoming due, we see no reason for the municipality to duplicate those same records maintained by the paying agent or registrar by keeping a bond register. There should be no unpaid outstanding matured bonds or coupons.
- (4) In all instances when employing a bank, trust company, or other financial institutions, be sure to protect the municipality from any liability arising due to any possible errors relating to names and addresses of current bondholders. This protection may be obtained by the financial institution furnishing a bond or insurance in favor of the municipality.

As stated previously, please consult your city or town attorney with questions regarding procedures for registered bonds.

MOTOR VEHICLE HIGHWAY FUNDS

Official Opinion No. 27-1965, issued by the Office of the Attorney General, held that cities and towns may construct, purchase and lease buildings with funds distributed to them from the Motor Vehicle Highway account, to be used exclusively for purposes which are incidental to the purposes expressly stated in IC 8-14-1-5.

DEFERRED COMPENSATION PLANS – PUBLIC EMPLOYEES RETIREMENT FUND

IC 5-10-1.1-1 allows cities and towns to contribute amounts before January 1, 1995 and continue or begin to contribute amounts after January 1, 1995, to a nonqualified deferred compensation plan on behalf of eligible employees, subject to any limits and provisions under section 457 of the Internal Revenue Code. IC 5-10-1.1-7 allows cities and towns to offer to their employees both the state deferred compensation plan and another deferred compensation plan that uses private vendors.

IC 5-10-2-2-1 further provides that it does not prohibit a city or town from establishing and providing before January 1, 1995 and continuing to provide after January 1, 1995, retirement, disability, and survivor benefits to the employees of the city or town if the city or town took action before January 1, 1995, and was not a member of the Public Employees' Retirement Fund (PERF) on January 1, 1995.

A city or town has no authority to establish a local pension plan by ordinance, resolution, or contract after January 1, 1995, without specific statutory authority. PERF, deferred compensation plans, police and fire pension plans, and utility employee pension plans are all authorized by statute.

CIGARETTE TAX DISTRIBUTIONS

Official Opinion No. 34-1965, issued by the Office of the Attorney General, held that cities and towns coming into existence subsequent to the last preceding United States decennial census are entitled to share in the cigarette tax distribution.

A city or town existing at the time of the last preceding decennial census continues to share in the distributions from the Cigarette Tax Fund on this basis and not on the basis of a subsequent Federal Special census.

PAYMENT OF CLAIMS PRIOR TO BOARD ALLOWANCE

IC 36-4-8 and IC 36-5-4 list various conditions which must be met prior to issuing warrants in cities and towns. IC 36-4-8-14 and IC 36-5-4-12 permit a city or town council to adopt an ordinance allowing the city or town fiscal officer to pay certain types of claims prior to board allowance.

The types of claims which could be paid before board allowance include: (1) property or services purchased from the U.S. Government, (2) License or permit fees, (3) Insurance premiums, (4) Utility payments or connect charges (5) General grant programs where advance refunding is not prohibited and the contracting party posts sufficient security to cover the amount advanced, (6) Grants of State funds, (7) Maintenance or service agreements, (8) Leases or rental agreements, (9) Bond or coupon payments, (10) Payroll, (11) State, federal or county taxes, (12) expenses that must be paid because of emergency circumstances, and (13) expenses described in an ordinance.

Each payment of expenses must be supported by a fully itemized claim and certified by the fiscal officer and must be reviewed by the proper board at its next regular or special meeting.

**OFFICE SPACE – CITY CLERKS – CITY CLERK-TREASURERS AND
TOWN CLERK-TREASURERS**

IC 36-4-10-2.5 and IC 36-5-6-5.1 provide that if:

“office space exists in a building owned or leased by a city or town, the city executive and city legislative body, or town legislative body shall provide office space for : (1) the clerk or clerk-treasurer; and (2) the staff and records of the clerk or clerk-treasurer.”

**ATTORNEYS AND LEGAL RESEARCH ASSISTANTS –
CITY CLERKS AND CITY AND TOWN CLERK-TREASURERS**

IC 36-4-10-5-5.5 and IC 36-5-6-8 state that a Clerk or Clerk-Treasurer may hire or contract with competent attorneys or legal research assistants on terms the Clerk or Clerk-Treasurer considers appropriate. Appropriations for salaries of attorneys and legal on research assistants employed shall be approved in the annual budget and must be allocated to the Clerk or Clerk-Treasurer for payment of attorneys and legal research assistant's salaries.

Furthermore, IC 36-4-10-5.5 states that employment of an attorney by a City Clerk or City Clerk-Treasurer does not affect a city department of law established under IC 36-4-4.

REIMBURSEMENT GRANTS - APPROPRIATION

City and town councils may appropriate any funds received as a grant from the state or federal government without using the additional appropriation procedures under IC 6-1.1-18-5, if the funds are provided or designated by the state or federal government as a reimbursement of expenditures. (IC 6-1.1-18-7.5)

COUNTY ECONOMIC DEVELOPMENT INCOME TAX (CEDIT)-USES

IC 6-3.5-7-13.1 allows such tax revenues to be used for any lawful purpose. If county economic development income tax revenues have been pledged to pay off economic development debt, then it must be used to pay off the debt.

PUBLIC CONSTRUCTION LAW - OVERVIEW

Whenever the cost of a public work project will be:

- (1) At least \$75,000 in:
 - a. A consolidated city or second class city; or
 - b. A county containing a consolidated city or second class city;
- (2) At least \$50,000 in:
 - a. A third class city with a population of more than 5,000; or
 - b. A county containing a third class city or town with a population of more than 5,000; or
- (3) At least \$25,000 in political subdivision or an agency not described in subdivision 1 or 2;

The board shall prepare general plans and specification describing the kind of public work required, but shall avoid specifications which might unduly limit competition. [IC 36-1-12-4(b)(1)] The board shall file the plans and specifications in a place reasonably accessible to the public, which shall be specified in the notice required. [IC 36-1-12-4(b)(2)] All plans and specifications for public buildings must be approved by the State Board of Health, State Fire Marshal, State Building Commissioner, and other state agencies designated by statute. [IC 36-1-12-10] Upon

filing of the plans and specifications, the board shall publish a notice two times, at least one week apart, with the second publication made at least seven days before the date the bids will be received, calling for sealed proposals for public work. [IC 36-1-12-4(b)(4); IC 36-1-12-4.5] The period of time between the date of the first publication and the date of receiving bids may not be more than six weeks. [IC 36-1-12-4(b)(5)] A bond or certified check shall be filed with each bid by a bidder in amount specified by the board. The amount may not be more than 10% of the contract price. The bond or certified check shall be made payable to the political subdivision. All checks of unsuccessful bidders shall be returned to them by the board upon selection of successful bidders. Checks of successful bidders shall be held until delivery of the performance bond. [IC 36-1-12-4.5]

There are additional requirements for projects over one hundred thousand dollars (\$100,000), such as the procurement of a payment bond and retainage. In all projects which are under the bid thresholds mentioned in the first paragraph, the board shall invite quotes by mail from at least three (3) persons known to deal in the class of work proposed to be done.

QUESTIONS AND ANSWERS FROM JUNE 2005 TRAINING SCHOOL

Question No. 1: During an audit we were told to appropriate the park nonreverting operating fund. Why? The funds come from program fees such as swimming lesson fees.

Answer: IC 36-10-3-22 states that a city or town council can establish a special nonreverting operating fund for park purposes from which expenditures may be made as provided by ordinance, either by appropriation by the board or by the unit's fiscal body.

Question No. 2: If the Parks Department issues bonds, will that take away from the Town's bonding power?

Answer: We have been advised by the Department of Local Government Finance that any general obligation bonds issued by a park and recreation department would be used in the calculation of city or town's debt limitation.

Question No. 3: Do we need to appropriate for police grants? The money is sent to us after we pay the officers for the time worked.

Answer: Yes. However, IC 6-1.1-18-17.5 allows city and town councils to appropriate any funds received as a grant from the state or federal government without using the additional appropriation procedures under IC 6-1.1-18-5, if the funds are provided or designated by the state or federal government as a reimbursement of expenditures. This statute would allow a city or town council to appropriate the reimbursement by passage of a resolution.

Question No. 4: What do you suggest we use in place of a warrant number for electronic fund transfers?

Answer: We recommend you use numbers and/or letters that easily identify the transactions. Try to obtain as much documentation from your banks on any electronic fund transfer sent by your office. IC 5-13-5-5 requires adequate documentation of such transactions so that they may be audited as provided by law.

Question No. 5: What can you use a riverboat fund for?

Answer: IC 36-1-8-9 allows you to use the money in a riverboat fund for any lawful purpose, which would include anything which is allowed by statute.

QUESTIONS AND ANSWERS FROM JUNE 2005 TRAINING SCHOOL – (Continued)

Question No. 6: A town clerk-treasurer has responsibilities over utility billing and collection and receives part of her salary from the utilities. Can a town council take away the clerk-treasurer's utility billing and collection duties and the pay related to those duties?

Answer: Yes. However, IC 36-5-3-2 states that the compensation of an elected town officer may not be changed in the year for which it is fixed, nor may it be reduced below the amount fixed for the previous year. Compensation is defined to mean the total of all money paid to an elected town officer for performing duties as a town officer, regardless of the source of funds from which the money is paid. It is our audit position that a town council would have to find other funds to fund a clerk-treasurer's total salary if it took away the portion of compensation he/she previously received from the utilities. (This would also apply to city clerk-treasurers because of similar language in IC 36-4-7-2)

Question No. 7: We will be getting checks from FEMA to cover the cost of cleanup and other costs incurred because of an ice storm this past winter. How do I handle these distributions?

Answer: IC 10-14-3-17 allows distributions from FEMA to be handled in the following manner:

1. If the money is to be used to reimburse funds for expenditures already incurred and paid and the conditions of IC 10-14-3-12 have been met, the amount received may be added back to the appropriation balances from which the expenditures have been previously made.

2. If the money is to be used for future expenditures, a separate fund should be set up entitled "Disaster Relief Fund." Such fund would not require appropriation or additional appropriation prior to spending the money.

It is recommended that all related expenditure records be maintained in a separate file for future audits required by State and Federal agencies.

Question No. 8: Are we required to advertise an ordinance that has a penalty clause for violation of the ordinance?

Answer: Yes. IC 36-4-6-14 and IC 36-5-2-10 require ordinances that prescribe a penalty for a violation to be published before they take effect, in a manner prescribed by IC 5-3-1 which requires publication one time within thirty (30) days after passage.

Question No. 9: Where can we obtain information on obtaining a sign which must be posted in our office dealing with minimum wage requirements?

Answer: We recommend you obtain such information from the U. S. Department of Labor at 317-226-6772.

Question No. 10: How do we handle insurance claim proceeds?

Answer: IC 6-1.1-18-7 allows the fiscal officer of a city or town to appropriate funds received from an insurance company if: (1) the funds are received as a result of damage to property of the city or town; and (2) the funds are appropriated for the purpose of repairing or replacing the damaged property.

QUESTIONS AND ANSWERS FROM JUNE 2005 TRAINING SCHOOL – (Continued)

Question No 11: Does a city or town have to record a weed cutting assessment lien at the County Recorder's office?

Answer: No. IC 36-7-10.1-4 states that if the owner of real property fails to pay a bill issued under IC 36-7-10.1-3 within the time specified in the ordinance, the city or town department specified in the ordinance shall certify to the county auditor the amount of the bill plus any additional administrative costs incurred in the certification. The auditor shall then place the total amount certified on the tax duplicate to be collected as property taxes are collected.

Question No. 12: Our City is considering granting a bonus to our full-time employees. Can this bonus be added to a regular paycheck or does it have to be in a separate check?

Answer: Since IC 36-4-7-3 (c) states that the compensation of appointive officers, deputies, and other employees of a city may not be increased during the budget year for which they are fixed, the payment of a bonus to city employees would be prohibited.

Question No. 13: My City increased its health insurance line item by 15% in case the union employees did not agree to go with the less expensive health insurance plan being offered other City employees. However, the union employees did agree to the less expensive plan but received a 3.5% increase in pay. Therefore, I need to transfer appropriation balances from the board of works health insurance line item to the various department salary line items to cover the salary increases. What is the process I need to follow in order to accomplish this?

Answer: First, the DLGF will have to grant you permission to transfer appropriations from one department to another department. Once you obtain approval from the DLGF, you would then have to use the additional appropriation process to reduce one department's budget and increase the other departments' budgets. A sample advertisement is in the Accounting and Uniform Compliance Guidelines Manual for Cities and Towns on page 4-6.

Question No. 14: If I sign the Accounts Payable Voucher Register, do I also need to sign each Accounts Payable Voucher?

Answer: No. The fiscal officer may sign either the Register or each individual Voucher.

Question No. 15: If I put the Riverboat distribution I receive every August in the general fund, do I need to have a specific line item in the general fund budget for the distribution?

Answer: No. If you placed the revenue sharing distribution in the general fund, then it would be accounted for as miscellaneous revenue in the general fund and no separate budget line item would be necessary.

Question No. 16: What percent of Motor Vehicle Highway distributions may be used for law enforcement purposes?

Answer: Fifteen percent (15%) of the motor vehicle highway distributions may be used by a city or town for law enforcement purposes in a city or town with a population of less than five thousand (5,000). In cities and towns with a population of five thousand (5,000) or more, ten percent (10%) of the distributions may be used for law enforcement purposes.

QUESTIONS AND ANSWERS FROM JUNE 2005 TRAINING SCHOOL – (Continued)

Question No. 17: What is the process for setting up a payroll clearing fund?

Answer: Detailed instructions on how to set up a payroll fund are listed in the Accounting and Uniform Compliance Guidelines Manual for Cities and Towns on page 38-1.

Question No 18: Can you rename an existing fund and use it for some other purpose? The fund was used solely for street cut bond refunds and has a small unidentified balance that has been carried over for five (5) years.

Answer. No. We recommend the fund be treated as a dormant fund under IC 36-1-8-5 and the balance transferred to the general fund.

Question No. 19: Do you include beginning investment balances in column A of Part 1 of the CTAR report?

Answer: No. Only the beginning cash balances should be presented in column A

Question No. 20: We received a special distribution of CEDIT money and were instructed to receipt the distribution to the Rainy Day Fund. How can this money be used?

Answer: IC 36-1-8-5.1 states that a city or town must pass an ordinance to establish a rainy day fund and must specify in the ordinance the purposes of the fund. The money in the fund could be used for any lawful purpose as set out in the ordinance. The fund is subject to the same appropriation process as other funds that receive tax monies.

Question No. 21: How do we know when and how often we are to be audited?

Answer: IC 5-11-1-25 requires the State Board of Accounts to audit all cities and all towns with a population greater than 5,000 on an annual basis. All other towns are to be audited biennially.

Question No. 22: If a clerk-treasurer hires an attorney in accordance with IC 36-5-6-8, can the attorney be paid from utility funds?

Answer: IC 36-5-6-8 (b) states that appropriations for the salaries of attorneys and legal research assistants employed under this section shall be approved in the annual budget. Accordingly, it is our audit position that such payments be made from funds that require appropriation.

Question No. 23: May we use Excel generated spread sheets in lieu of prescribed accounting forms?

Answer: Some accounting forms may be replicated using Excel software such as the Capital Asset Ledger and Employee's Service Record. However, we do not feel the software contains sufficient controls to allow a city or town to use Excel to generate the day to day accounting transactions to replace the ledger of receipts, disbursements, and balances and the appropriation ledger.